

REMARKS

By the present amendment, Claims 107 and 108 have been canceled without disclaimer or prejudice, and new Claims 109 and 110 have been added. Accordingly, Claims 54-106, 109, and 110 are presently pending, and favorable consideration thereof is respectfully requested. In response to the restriction requirement, applicant provisionally elects Group II (Claims 77-106), with traverse.

Restriction Requirement/Election

The Examiner has indicated that restriction to one of the following inventions is required under 35 U.S.C. § 121:

- I. Claims 54-76, drawn to a method classified in class 323, subclass 266;
- II. Claims 77-106, drawn to an apparatus classified in class 323, subclass 282; and
- III. Claims 107-108, drawn to a process for directing a processor to control an energy transfer device, classified in class 323, subclass 318.

Applicant provisionally elects Group II (Claims 77-106), with traverse. Applicant respectfully submits that the restriction requirement is traversed on either one or two alternative grounds:

- (i) that restriction would not be proper because it would not be a serious burden on the Examiner to search all classes; or
- (ii) in the alternative, even if restriction would otherwise be proper, Claims 106 acts as a "linking claim," permitting all presently pending claims to stand in a single application.

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

Group III Canceled Without Prejudice or Disclaimer

By the present amendment, formerly independent Claims 107 and 108 of Group III have been canceled. New Claims 109 and 110, which depend from independent method Claim 54, have been added. Claims 109 and 110 are thus within Group I, and the restriction requirement remains only between Group I and Group II.

(i) No Serious Burden

Applicant respectfully submits that the requirements for a restriction between Groups I and II are not satisfied, because there would be no serious burden to search Groups I and II in the same application.

As noted in M.P.E.P. § 803, there are two necessary criteria for a proper restriction requirement: (1) the inventions must be independent or distinct as claimed; and (2) there must be a serious burden on the Examiner if restriction is not required. M.P.E.P. § 803 further states that if the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to two distinct or independent inventions.

Applicant does not disagree with the Examiner's conclusion that the inventions are distinct; rather, applicant respectfully submits that examination of all of the presently pending claims in a single application would not impose any such "serious burden."

A *prima facie* showing of "serious burden," such as a showing that the groups of claims fall under separate classifications, may be rebutted by appropriate showings or evidence by the applicant. M.P.E.P. § 803.

Applicant respectfully submits that such evidence can be found in the U.S. Patent and Trademark (USPTO) database, <http://www.uspto.gov/patft/index.html>, wherein as of July 21, 2005, at least 22 issued United States patents have been jointly classified under class 323,

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

subclass 266 and class 323, subclass 282. Applicant respectfully submits that these 22 issued patents demonstrate that the PTO does not generally consider it to a "serious burden" to classify a single application under both subclasses 266 and 282 of class 323, the same classes as Groups I and II respectively in the present application, and to search both classes accordingly.

Applicant therefore respectfully submits that the second requirement for a restriction requirement is not satisfied, and that the restriction requirement is therefore traversed.

(ii) Linking Claim

In the alternative, even if the Examiner does not accept applicant's submissions that there would be no serious burden to search Groups I and II in the present application, applicant respectfully submits that independent Claim 106 acts as a "linking claim" linking Groups I and II.

In this regard, M.P.E.P. § 809.03 regarding linking claims states as follows :

There a number of situations which arise in which an application has claims to two or more properly divisible inventions, so that a requirement to restrict the application to one would be proper, but presented in the same case are one or more claims (generally called "linking" claims) inseparable therefrom and thus linking together in the inventions otherwise divisible.

The most common types of linking claims which, if allowed, act to prevent restriction between inventions that can otherwise be shown to be divisible, are . . . (C) *a claim to "means" for practicing a process linking proper apparatus and process claims*

(Emphasis added.)

In the present case, applicant respectfully submits that independent Claim 106 of Group II, which is cast in "means-plus-function" form, recites the "means" for practicing the process of Claim 54 in Group I, as contemplated in M.P.E.P. § 809.03(c). Thus, independent Claim 106 acts as a "linking claim" linking process Claims 54-76, 109, and 110 of Group I with apparatus Claims 77-105 of Group II.

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

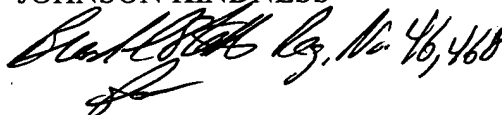
Therefore, even if the inventions of Group I and Group II are "properly divisible," applicant respectfully submits that Claim 106 links Groups I and II as contemplated in M.P.E.P. § 809.03, with the result that it is permissible for both Groups I and II to stand in the same application. Applicant therefore respectfully submits that the restriction requirement is traversed.

CONCLUSION

In summary, applicant provisionally elects Group II (Claims 77-106), and respectfully submits that the restriction requirement is traversed, on either one of the two alternative grounds discussed above. Applicant respectfully requests favorable consideration of pending Claims 54-106, 107, and 108. The Examiner is invited to telephone the undersigned with questions regarding this matter.

Respectfully submitted,

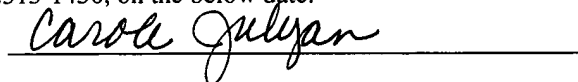
CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}



John D. Denkenberger
Registration No. 44,060
Direct Dial No. 206.695.1749

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LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100